IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Date of Decision: 9th December,1996.

Special Civil Application No. 2044 of 1995

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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Dr. Jayantilal Mohanlal Desai
:Petitioner.

Versus

State of Gujarat & Others. :Respondents.

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Shri D.D. Vyas, Advocate for the petitioner.
Ms. Parmar, A.G.P., for respondent No.1.
Smt. K.A. Mehta, Advocate for respondents Nos. 2 & 3.

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Coram: H.R. Shelat,J.
(9-12-1996)

JUDGMENT:

The petitioner has filed this writ petition under Article 227 of the Constitution of India, with a prayer to the effect that this Court may be pleased to issue a writ, of certiorari or any other appropriate writ, or an order quashing the impugned order dated 20th May 1993 passed by the then Dy. Collector, Navsari in C.T.S.

Appeal No. 53 of 1992-93, the copy of which is annexed as Annexure `C' to this petition. The question that falls for consideration is whether the owner of the neighbouring property can as of a right claim the opportunity of being heard before the City Survey Officer or the authority in appeal who is to pass the order qua the right, title, interest, possession, use and occupation, sketch, area, number, tenure, liability, nature, encumbrance, measurement etc., of a property (land).

2. The petitioner is the owner of the land bearing Rev. Survey No. 266/1, Tika No.21, Survey No. 20 of Plot No.9 the new City Survey Tika number of which is 60 and Survey No. 4043 admeasuring 644 sq.meters situated in Ashanagar, behind Garda College Campus, Ward No.6 at Navsari in Valsad District. It is the `C' tenure land. He purchased this land on 20-8-1963 by a registered Sale Deed from Dr. Naranjibhai Bhikhubhai Patel. After purchasing the land, the petitioner constructed a building and at present he is using and occupying the same with his family. Towards the West of his house, there is a plot bearing Tika No. 56, S. No. 3054 admeasuring 412 sq.mts. It is also the `C' tenure land, whereon 100% construction is not permitted, margin land has to be kept open. Formerly, the land belonged to Desai Mancherji Palanji, Bejarji Kharshedji and Ardeshar Manekji. The plot bearing Survey No. 3054 was owned and possessed by Govindji Hiraji Patel. The respondents Nos. 2 and 3, who are at present the owners of Survey No. 3054, made an application for change in the tenure from `C' to `A'. The Mamlatdar rejected the application in the year 1973-74. Thereafter they filed the appeal being C.T.S. Appeal No. 53/1992-93. The then learned Deputy Collector on 20th May 1993 allowed the appeal and changed the tenure of the land from `C' to `A' and so 100% construction thereon is now possible. In the then princely State of Baroda, the land was `A' tenure land. In 1914 A.D., City Survey enquiry was held. At that time the land was found to be of `A' tenure land. In 1974 when again the City Survey inquiry was held, the tenure of the land came to be changed from `A' tenure to `C' tenure, passing necessary order so as to promote worthier and healthier housing schemes for better living. After the respondents Nos. 2 & 3 filed the appeal before the Deputy Collector at Navsari for getting the tenure of the land changed, the petitioner having come to know about the same, urged the Deputy Collector to afford the opportunity of being heard. The same was turned down, and the Deputy Collector, though the appeal was filed about 20 years after the Mamlatdar passed the order,

passed the order in appeal favouring the respondents Nos. 2 & 3. The Deputy Collector held that the order, which was challenged before him, was passed without any authority, and the then concerned owner was not heard. Further, placing reliance on the G.R. dated 3rd January, 1958 produced at Annexure `G' and probably on Para 127 of the City Survey Manual, as well as Para 108(5)(6) of the City Survey Manual, the Dy.Collector allowed the appeal and converted the land from `C' tenure to `A' tenure. The petitioner then came to know about the order having been passed by the Dy. Collector. He, therefore, could judge that the respondents Nos.2 & 3 would be able to use 100 % of the land for the purpose of construction, he would not have to keep the margin land open to sky, as a result several problems would arise, and the construction of the flats or dwelling blocks would certainly be touching to his compound wall leaving no land in between. He also knew that the Nagarpalika of Navsari had granted the permission to construct. The petitioner therefore filed the appeal before the Collector, Valsad against the permission to construct granted by the Nagarpalika joining the Dy. Collector as one of the parties. He also filed this petition challenging the legality and validity of the impugned order on the ground that the opportunity of being heard was not given to him and on few other grounds.

3. In democratic State, rule of law cannot be divorced. In our democratic system, rule of law is adopted and the same is supreme. No authority can therefore pass the order capriciously or dehors the law. Any order passed without following procedure and principle of natural justice is really the negation of the rule of law resulting into civil consequences affecting the rights of a person. The petitioner was not given the opportunity to submit his say; consequently his rights qua his property were jeopardised. Making such submission, the learned advocate for the petitioner urged to set aside the impugned order and issue appropriate direction.

4. The authority whether judicial or quasi-judicial who has to adjudicate must adhere to the principles of natural justice and must give a reasonable opportunity of being heard to the person who is interested or likely to be affected by the order to be passed or against whom the order is sought. Many are under the belief that alike in U.K. and U.S.A. the administrative authority is not bound to give the opportunity to submit if there is no statutory provision, as in that case it is not regarded as a sine qua non of natural justice. In short, the

person is not entitled to the opportunity of being heard in administrative matter in the absence of conferment of the right by the Statute, but such belief is not congruous with law. In appeal, examining the merits of the order passed or decision taken by City Survey Officer, necessary order is passed which is the quasi-judicial act, and so the principle of audi alteram partem even if the same being not specifically covered in Statute will come into play. Even if it is considered to be the administrative act, the doctrine of natural justice must be held to be applicable only if it involves civil consequences, because in every administrative order principle of natural justice would not be applicable and those who are likely to be prejudicially affected should be given the opportunity of being heard so as to have fairness and check insidiousness, or collusion or arbitrariness or unreasonableness, capriciousness or irregularity or unjust exercise of powers or injury to others. Now the question that arises is whether the petitioner has a right to claim the opportunity of being heard. The answer to the question whether his interest is prejudicially affected is the decisive factor.

5. Urbanization has come to fore for various reasons and so cities are becoming crowded. To check the evils or bad effects of urbanisation, rules are framed or certain standards in all the fields are adopted or expected, and lands are also categorised. Those rules or standards are required to be kept in mind. Within available resources society and individual have a right of adequate, if not better living system, attune with rules of health and modernization which is the off-spring of a right to life guaranteed in the Constitution. By the march of science, notions and rights get changed or take a new shape, and some times present are waived, or ignored being obsoluscent and new are found imperative for adequate living. The authority therefore cannot shut its eyes towards new right or standards or system the society or State is adopting for providing and encouraging adequate living. Its order must be compatible with the standard or system adopted. Hence when individual right or matter is likely to be linked with the group rights or likely to affect the community-life, opportunity of being heard to the concerned persons has to be given either by giving notice individually or issuing public notice.

6. The persons purchase land and erect the dwelling houses in a particular locality finding the same to be suitable qua decent life, health, multi-purpose utility, convenience and comforts and uniform system; and more to

this certain rules made for adequate living in the locality or town or city. If by administrative act or by any order to be passed in any proceeding is likely to affect local set up or system of life or likely to run counter to the uniformity for comforts, convenience and adequate living, notice to the concerned parties is necessary. The petitioner and others in the locality following and accepting the rules suitable to their life style preferred to have their residence. During the course of hearing, it was made clear that in the locality where land in question is situated, virtually all the plots are categorised as `C' tenure land and so whoever desires to build residential blocks or units has to leave the margin land open because building rules mandate so which is not the case where `A' tenure land is to be used for erecting residential units. By the order in question, therefore, their right to adequate living free from close-knit is likely to be affected. The petitioner had therefore a right to claim opportunity to submit. As the same is not given, the impugned order is required to be struck down. Even on other counts also, it is not maintainable.

7. Even when administrative order is passed, the reasons thereof should be given so that in case of its challenge the same can well be tested on merits on judicial anvil. In the case on hand, it is not stated why after 20 years the appeal was entertained and what was well-set in the locality was disturbed. It is also not ascertained whether in fact the predecessor-in-title of the respondent Nos. 2 & 3 was at the time of former city survey inquiry was given notice, and heard or not. There is nothing indicating that standards accepted to check the evils or odds of urbanisation were borne in mind. To provide adequate living system and maintenance of the standard thereof, Town Planning Act and alike other Acts are enacted. To be in tune with such adequate system, it seems formerly lands were converted from `A' tenure to `C' tenure in 1973 AD and such object is not borne in mind. Further why from `A' tenure to `C' tenure the land was converted at the time of former inquiry, and what was then the good cause to restore the nature that stood during the reign of the then princely State of Baroda is not at all dealt with, and conveniently the object to promote adequate living system is ignored. The order in question therefore cannot be said to be well-reasoned, the same on that count requires to be struck-down.

8. In one's own support, the Deputy Collector has placed reliance on the Government Resolution dated

3-1-1958 of the then Bilingual Bombay State, the copy of which is produced at Annexure `G'. It does not command the authority to convert the tenure of land. It is issued to confer and regulate the occupancy of the land, levy of occupancy charges, and provide security to the tenure of the land, i.e., house-sites formerly under the reign of the then princely State, and after Independence, merged in the then Bombay State. The same is certainly not for converting the tenure of the land, which can be done under the law applicable and also undergoing necessary formalities. The reliance is erroneously placed and order that is passed on that base is nothing but capricious exercise of powers.

9. In view of Section 205 of the Bombay Land Revenue Code, the appeal before the Deputy Collector against the order of the City Survey Officer is required to be preferred within the period of 60 days. The order converting the land from `A' tenure to `C' tenure challenged in appeal before Deputy Collector was passed on 31-7-74 when City Survey Officer held inquiry. Thereafter in 1993, the appeal came to be filed. There is nothing on record indicating what was the good cause to admit the appeal, and whether delay u/s. 206 Bombay Land Revenue Code was condoned. Of course, no appeal against admission of appeal after the expiry of the period of limitation is competent in law, and therefore authority admitting the appeal has to assign good cause so that under supervisory jurisdiction under the Constitution, the High Court can have the adequate scope to test it, when group interest is involved. This Court does not have anything to examine the order qua collusion etc., when condonation is assumed.

10. It was contended on behalf of the respondents that in view of Para 106 of City Survey Manual, it was open to the respondent to file appeal at any time even after several years. It may be stated that the provision of Manual cannot override the provision of Bombay Land Revenue Code. Para 106 therefore cannot override Section 205 of the Bombay Land Revenue Code. In the alternative also, the contention cannot be accepted. Para 106 would come into play for filing appeal at any time without the rigour of Section 205 if before passing the order procedural formalities or fundamental rules relating to procedure are ignored or set at naught. The order under challenge does not indicate that formerly by City Survey Officer procedural formalities were set at naught. There is no application of mind in this regard and mechanically what has been alleged by respondent is accepted which amounts to non-application of mind and discarding

justness, fairness and reasonableness. No other submission is advanced.

10.A The impugned order came to be passed by the Deputy Collector at Navsari on 5th January 1994. The petitioner's request to grant opportunity to submit was then turned down on 11th January 1994 which was communicated to the petitioner. The petitioner then filed this petition on 15th September 1995. It is, therefore, contended on behalf of the opponents that the petition is filed late by one year, eight months and five days, and such inordinate delay was fatal to the petition. On that count, namely delay, latches and acquiescence, therefore the petition was liable to be rejected.

10-B. Although Articles 226 & 227 of the Constitution of India do not fix any particular period of limitation, the party wanting to claim relief must, therefore, come before the High Court as expeditiously as possible. It is for the Court to consider in each case having regards to facts and circumstances of the case, whether there is gross delay in presenting the petition. There can be no hard and fast rule, or no mathematical formula laying down the period within which the remedy must be exhausted, beyond which, delay would be considered fatal to the exercise of the discretion in favour of the petitioner. However, ordinarily if the petition is filed within the period of 8 to 10 months after the cause of action arises, the same should be held to have been filed within reasonable time. Accordingly, if this petition is considered, one would be inclined to believe that it is filed late by one year and on that count it must fail, but petition on that count cannot be dismissed. If the petition is admitted, it cannot be thrown off on the technical plea of delay or latches or acquiescence. Once the petition is admitted, ordinarily it should be presumed that even if there is a delay, the same is condoned of course subject to the plea that may be raised by the other side on his appearance before the Court and in that case court will have to consider the question about delay and decide in whose favour exercise of the discretion must tilt. If the plea is not raised by the otherside, but the contention about delay, latches or acquiescence is raised at the time of submitting arguments, the same cannot be countenanced because in that case, the other side will have no chance to explain the delay by filing the affidavit.

10-C. In the case on hand, no plea regarding delay, latches or acquiescence has been raised in the affidavit

filed by the respondents and for the first time at the time of making submissions the contention is raised, and therefore the petitioner has lost the opportunity to explain the delay by filing the counter-affidavit. When that is so, the petition cannot be thrown overboard on the technical plea of delay, latches and acquiescence.

10-D. It should be borne in mind that the doctrine of acquiescence, delay or latches can be invoked if it is found that assertion of a right by the petitioner has caused prejudice to the opposite party because of late filing of the petition. In other words, if there is belated or stale claims, i.e. there is gross or inordinate delay in filing the petition, the delay would gain importance if entertaining the petition and grant of the relief would have the result of unsettling settled state of affairs and order of things in existence for a long time. If the opposite party is not likely to suffer any injury, delay will loose its vigour. In the case on hand, the land now in possession of respondent No.4 has to be utilized for constructing the flats, or dwelling units. Yet the flats are not constructed and land is not virtually used for any other purpose. If the petition is, therefore, entertained and decided the opponents would not suffer any injury; and nothing would be upset and no prejudice is likely to be caused. At the most they will have to modify or alter their plan which cannot be termed injury or prejudice in the eye of law. If the respondent No.4 has purchased the land from respondent No.3 knowing about the tenure-order in question, the petition cannot be thrown overboard on the ground that owing to late filing of petition, expected benefits thereof will be jeopardised and upset the set-up because no one can escape of latent, patent or inherent infirmities of the act, order or transaction later on coming to light on adjudication having erosive effect on the good aspects thereof as he can be deemed to have accepted the otherside of the transaction. Soon he came to know about the plan to construct, the petitioner approached the Nagarpalika, Navsari, so as to resist the grant of the permission to construct, but on the same being granted, the petitioner challenged the same before the Collector, Valsad, filing appropriate application and also filed this petition. So it would not amount to acquiescence. Further the delay, in the alternative, cannot be considered gross. In view of the matter, this petition cannot be held bad because of the doctrine of acquiescence, delay and latches. No other submissions are advanced.

11. I am, therefore, of the view that injustice has

been done to the petitioner. The petition is, therefore, allowed, and the order dated 20th May 1993 passed by the Dy. Collector is set aside. The Dy. Collector shall now consider the appeal afresh hearing the concerned and the petitioner, and shall pass appropriate order. No costs in the circumstances of the case. Rule is made absolute.

Note: As per the order dated 28-1-1997 passed after the Court was moved on the basis of speaking to minutes, Paras 10-A to 10-D are inserted hereinabove. Note portion not to be given to the reporter.